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8 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. *2012-115*

12 **MARYANN FABIAN, a.k.a. MARY ANN**  
13 **FABIAN**  
14 **39 Park Avenue**  
**Binghamton, NY 13903**  
**Registered Nurse License No. 531816**

**A C C U S A T I O N**

15 Respondent.

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17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her  
20 official capacity as the Executive Officer of the Board of Registered Nursing, Department of  
21 Consumer Affairs.

22 2. On or about April 24, 1997, the Board of Registered Nursing issued Registered Nurse  
23 License Number 531816 to Maryann Fabian, also known as Mary Ann Fabian (Respondent). The  
24 Registered Nurse License expired on April 30, 2009, and has not been renewed.  
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CONTROLLED SUBSTANCES/DANGEROUS DRUGS

8. Code section 4021 states:

“‘Controlled substance’ means any substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.”

9. Code section 4022 provides:

“‘Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for self-use in humans or animals, and includes the following:

“(a) Any drug that bears the legend: ‘Caution: federal law prohibits dispensing without prescription,’ ‘Rx only’ or words of similar import.

“(b) Any device that bears the statement: ‘Caution: federal law restricts this device to sale by or on the order of a \_\_\_\_\_,’ ‘Rx only,’ or words of similar import . . .

“(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006.”

10. “Morphine Sulfate”, as a single entity, is a Schedule II controlled substance pursuant to Health and Safety Code section 11056, subdivision (b)(1)(L), and a dangerous drug within the meaning of Code section 4022. Combined with one or more non-opiate drugs, Morphine Sulfate is subject to control as a Schedule III controlled substance as designated by Health and Safety Code section 11056, subdivision (b)(1)(M), and a dangerous drug within the meaning of Code section 4022. Morphine Sulfate is a phenathrene-derivative agonist and the principal alkaloid of opium.

11. “Vicodin” is a Schedule II controlled substance pursuant to Health and Safety Code section 11056, subdivision (e)(3), and a dangerous drug within the meaning of Code section 4022. Vicodin is a trade name for the narcotic substance Hydrocodone, or hydrocodeninone, combined with the non-narcotic substance acetaminophen.

12. “Demerol” is a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (c)(17), and considered a Schedule II controlled substance within the meaning of section 1308.12, subdivision (c)(16), of Title 21 of the Code of Federal Regulations.

1 Demerol is a dangerous drug within the meaning of Code section 4022. Demerol is a trade name  
2 for Pethidine or Meperidine.

### 3 COST RECOVERY

4 13. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
5 administrative law judge to direct a licentiate found to have committed a violation or violations of  
6 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
7 enforcement of the case.

### 8 CAUSE FOR DISCIPLINE

9 (Unprofessional Conduct – Out of State Discipline)  
(Bus. & Prof. Code § 2761, subd. (a)(4))

10 14. Respondent has subjected her registered nurse license to disciplinary action under  
11 Code section 2761, subdivision (a)(4), in that on or about October 7, 2004, in a disciplinary action  
12 before the Board of Nursing for the State of Massachusetts (“Massachusetts Board”), Docket No.  
13 RN-01-277, the Massachusetts Board entered a Final Order by Default (Order) revoking  
14 Respondent’s right to renew her registered nurse license in Massachusetts. Respondent was  
15 further ordered to return any nursing license issued to her by the Massachusetts Board, whether  
16 current or expired, within five days of the Order.

17 15. The Order allowed Respondent to petition the Massachusetts Board for relicensure  
18 when she could effectively demonstrate her ability to practice nursing in a safe and competent  
19 manner by providing documentation satisfactory to the Massachusetts Board. Such  
20 documentation would have to include evidence that Respondent has been in stable and sustained  
21 recovery for three years immediately preceding any petition for relicensure. The order also  
22 required Respondent to submit the following with her petition for relicensure: (1) the results of  
23 random supervised urine tests, collected no less than ten times per year during the two years  
24 immediately preceding the petition for relicensure; (2) documentation by a licensed mental health  
25 professional verifying Respondent’s attendance of group or individual counseling or therapy, or  
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1 both, during the two years immediately preceding the petition for relicensure, to be written within  
2 thirty days of the petition for relicensure; (3) a summary from the mental health professional  
3 regarding Respondent's progress in therapy and her full recovery from substance abuse,  
4 dependence, and addiction; (4) a statement from the mental health professional regarding the  
5 frequency and length of therapy; (5) specific treatment recommendations from the mental health  
6 professional for Respondent's sustained recovery from substance abuse, dependence, and  
7 addiction; (6) written verification from Respondent's primary care provider and any specialist(s)  
8 whom she may have consulted with indicating that Respondent is medically able to resume the  
9 safe and competent practice of nursing, composed within thirty days of the petition for  
10 relicensure; (7) if employed during the year immediately preceding the petition for relicensure,  
11 submit a performance evaluation from her employer that reviews Respondent's attendance,  
12 reliability, and overall job performance; (8) assist the Massachusetts Board in obtaining  
13 satisfactory documentation that, at the time of petition for relicensure, there are no pending  
14 actions or obligations, criminal or administrative, against her before any court or administrative  
15 body; (9) submit documentation satisfactory to the Massachusetts Board that, at the time of  
16 petition for relicensure, her nursing license issued by any other jurisdiction is in good standing or  
17 is eligible for renewal; and (10) submit documentation satisfactory to the Massachusetts Board of  
18 her successful completion of all continuing education required by Massachusetts Board  
19 regulations for the two license renewal cycles immediately preceding her petition for relicensure.  
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22 16. The Massachusetts Board's Order was based upon the Massachusetts's Board's June  
23 14, 2004 Order to Show Cause, which ordered Respondent to show cause describing why the  
24 Massachusetts Board should not suspend, revoke, or take other disciplinary action against her  
25 registered nurse license. Respondent did not file an Answer to the Order to Show Cause or  
26 otherwise respond at any time during the proceedings. On or about July 14, 2004, prosecuting  
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1 counsel for the Massachusetts Board filed a Motion for Entry of Default Judgment and for Final  
2 Decision and Order. Respondent was notified of her right to a hearing, waiver of right if she did  
3 not timely move to remove the default, and that failure to remove the default within seven days  
4 would cause the Board to (a) enter a Final Decision and Order assuming the truth of the  
5 allegations in the Order to Show Cause; and (b) revoke, suspend, or take other disciplinary action  
6 against her license to practice as a registered nurse in Massachusetts, including any right to  
7 renew. Respondent did not appear or defend the action. The Massachusetts Board voted to adopt  
8 the Order described above in paragraph 14 on August 11, 2004, and entered the Order on October  
9 7, 2004. The Order became effective on October 17, 2004.  
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11 17. The Order to Show Cause alleged the following: On or about October 2000,  
12 Respondent was employed by U.S. Nursing Corporation/FASTAFF as a traveling nurse and was  
13 assigned to Worcester Medical Center in Worcester, Massachusetts. On or about October 17,  
14 2000, Respondent informed a co-worker that she did not have a password that would enable her  
15 to sign out Morphine Sulfate that was needed for Patient A. After the co-worker accessed the  
16 system using her own password, Respondent withdrew 10 milligrams of Morphine Sulfate at  
17 approximately 10:30 p.m. Respondent documented that the Morphine Sulfate was to be  
18 administered to Patient A. There was no medication order in effect on October 17, 2000, that  
19 would have authorized the administration of Morphine Sulfate to Patient A. Respondent failed to  
20 actually administer the Morphine Sulfate to Patient A, and failed to document the withdrawal,  
21 administration, or wasting of the controlled substance in Worcester Medical Center records.  
22 Furthermore, on or about October 17, 2000, Respondent was observed placing a syringe  
23 containing Morphine Sulfate in her backpack. On numerous occasions in and around October  
24 2000, Respondent withdrew the following controlled substances from the PYXIS system without  
25 supporting physician orders or in a manner inconsistent with existing physician orders: Morphine  
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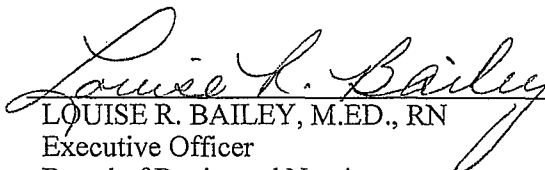
1 Sulfate, Vicodin, and Demerol. The PYXIS is an automated dispensing system that monitors the  
2 intake and output of controlled substances. Finally, the Order to Show Cause alleged that on  
3 numerous occasions during this time period, Respondent diverted controlled substances.

4 PRAYER

5 WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this  
6 Accusation, and that following the hearing, the Board of Registered Nursing issue a decision:

- 7
- 8 1. Revoking or suspending Registered Nurse License Number 531816, issued to  
9 Maryann Fabian, also known as Mary Ann Fabian;
- 10 2. Ordering Maryann Fabian, also known as Mary Ann Fabian to pay the Board of  
11 Registered Nursing the reasonable costs of the investigation and enforcement of this case,  
12 pursuant to Business and Professions Code section 125.3; and
- 13 3. Taking such other and further action as deemed necessary and proper.
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16 DATED: August 16, 2011

17   
18 LOUISE R. BAILEY, M.ED., RN  
19 Executive Officer  
20 Board of Registered Nursing  
21 Department of Consumer Affairs  
22 State of California  
23 Complainant

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